

70965-8

70965-8

NO. 70965-8-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

RAYMOND EDWARDS,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR WHATCOM COUNTY

The Honorable Ira J. Uhrig, Judge

BRIEF OF APPELLANT

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A. INTRODUCTION

Raymond Kurt Edwards was convicted of unlawful possession of a controlled substance (methamphetamine) and bail jumping. When he made incriminating statements to arresting officers, Edwards was demonstrably not alert, did not speak clearly, appeared in an altered state, and was under the influence of narcotics and alcohol so much so that arresting officers called an ambulance rather than booking him in jail. Nonetheless, the trial court ruled that Edwards's statements were admissible because Edwards had knowingly, voluntarily, and intelligently waived his Miranda¹ rights. Because Edwards lacked the mental faculties to freely and rationally waive his constitutional rights, the trial court should have suppressed his statements. Edwards's conviction must accordingly be reversed.

The trial court also failed to enter written findings of fact and conclusions of law following the suppression hearing as CrR 3.5(c) required. Even if the trial court properly admitted Edwards's statements, this court must remand this matter to the trial court for entry of written CrR 3.5 findings and conclusions.

B. ASSIGNMENTS OF ERROR

1. The trial court erred when it denied Edwards's CrR 3.5 motion to suppress incriminating statements obtained by police.

¹ Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

2. The trial court erred in ruling that Edwards's statement that he had used meth earlier in the day was not incriminating.

3. The trial court erred in ruling that a preponderance of the evidence showed that Edwards's statements were made pursuant to a knowing, voluntary, and intelligent waiver of his Miranda rights.

4. The trial court erred in ruling that no evidence indicated that Edwards was not sufficiently coherent to understand and waive his Miranda rights.

5. The trial court failed to enter written findings of fact and conclusions of law after the suppression hearing as required by CrR 3.5(c).

Issues Pertaining to Assignments of Error

1. The State bears the heavy burden to prove a knowing, voluntary, and intelligent waiver of Miranda rights. Did the State fail to satisfy this burden where substantial evidence revealed that Edwards was mentally impaired and intoxicated when he waived his rights and made inculpatory statements?

2. The trial court ruled that there was no evidence to indicate that Edwards was not sufficiently coherent to waive his Miranda rights. Did the court err in so ruling where substantial evidence revealed that Edwards was mentally impaired and intoxicated when he waived his rights and made inculpatory statements?

3. CrR 3.5(c) requires written findings of fact and conclusions of law after a hearing on the voluntariness of a defendant's statement. No findings or conclusions were filed in this case. Must this case be remanded for entry of the required findings and conclusions?

C. STATEMENT OF THE CASE

1. Charges and motion to suppress

The Whatcom County prosecutor initially charged Edwards with one count of unlawful possession of a controlled substance, methamphetamine. CP 2-3. After Edwards failed to show up for a court hearing scheduled on November 28, 2012, the State amended the information to add a charge for bail jumping. CP 6-7.

Before trial, Edwards moved to suppress statements made to police officers before and after his arrest pursuant to CrR 3.5. 1RP² 10-11.

2. Suppression hearing testimony

On June 14, 2012, Officer Mike Catrain of the Ferndale Police Department was dispatched to respond to reports of an assault in progress. 1RP 11, 13. When Officer Catrain approached Edwards, he asked Edwards what had happened and what was going on with him. 1RP 15. Edwards responded that he had used methamphetamine earlier that morning. 1RP 15.

² This brief refers to the verbatim reports of proceedings as follows: 1RP – August 26 and 27, 2013; 2RP – August 29, 2013.

Officer Catrain described Edwards as “in an altered state” and unable to focus. 1RP 16-17. Officer Catrain also indicated that Edwards was fidgeting, unsteady, and that Edwards’s speech was unclear and inaudible. 1RP 17-19.

Officer Jason Torgeson arrived on the scene shortly after Officer Catrain’s first contact with Edwards. 1RP 15, 22. Officer Torgeson placed Edwards under arrest and searched him. 1RP 23. Edwards managed to follow Officer Torgeson’s instructions and cooperate. 1RP 24.

Officer Torgeson found a small plastic baggie in one of Edwards’s pant pockets, the contents of which Officer Torgeson recognized as methamphetamine. 1RP 26-27. Officer Torgeson gave Edwards Miranda warnings. 1RP 28. Officer Torgeson stated that at that point, Edwards made eye contact and responded that he understood his rights and mumbled that he wished to speak with Officer Torgeson. 1RP 28-29. Edwards stated again that he had used meth earlier in the day and informed Officer Torgeson that the substance in the baggie was meth. 1RP 30-31.

Officer Torgeson’s descriptions of Edwards were consistent with Officer Catrain’s. Officer Torgeson indicated that he was concerned that Edwards was under the influence of narcotics and possibly alcohol and that Edwards’s intoxication might be increasing. 1RP 31-33. Officer Torgeson

also described Edwards as twitching, being unable to focus, having decreased alertness, and gazing off. 1RP 36-37.

Given Officer Torgeson's concerns over Edwards's physical and mental state and level of intoxication, Officer Torgeson declined to transport Edwards to jail, "knowing that Whatcom County Jail would require a fit for jail prior to being booked." 1RP 34. Instead, Officer Torgeson called a medical aid car to the scene, which took Edwards to the hospital. 1RP 32. Although Officer Torgeson followed the aid car to the hospital, given Edwards's "lengthy stay at the hospital," Officer Torgeson released Edwards from police custody.³ 1RP 37.

3. Court's suppression ruling

The court ruled that all of Edwards's statements to officers were admissible. 1RP 48. As for Edwards's statement to Officer Catrain before being placed under arrest that he had used meth earlier in the day, the court ruled that it did "not believe that the statement was made as a result of . . . custodial interrogation" 1RP 47. As for Edwards's post-arrest statement that he had used meth earlier in the day, the court indicated that this was "not an incriminating statement" because the "charge [was] not having used meth" but "possession of meth." 1RP 48. With regard to

³ Although Edwards did not testify at the CrR 3.5 hearing, his trial testimony was consistent with having been hospitalized overnight. 1RP 139. Edwards also testified that he could not recall being placed under arrest or discussing methamphetamine with arresting officers. 1RP 153-54, 156.

Edwards's post-arrest identification of the baggie's contents as methamphetamine, the court ruled that there was "no evidence whatsoever that Mr. Edwards was not sufficiently coherent to understand" and that "the preponderance of the evidence clearly indicates that the statements that were made were the result of a voluntary, knowing, intelligent waiver of Miranda rights and therefore admissible." 1RP 48. Edwards's statements were admitted against him at trial. 1RP 54, 66-67, 80.

Following the CrR 3.5 hearing, the court asked the State to "craft some Findings and Conclusions." 1RP 48. The State failed to do so. To date, no CrR 3.5 findings or conclusions have been filed.

4. Conviction and sentence

The jury returned guilty verdicts for unlawful possession of a controlled substance, methamphetamine, and for bail jumping. CP 32. The trial court sentenced Edwards, within the standard range, to three months of confinement on each count, to be served concurrently. CP 37-38; 2RP 9. Edwards's sentence also included a victim assessment, court costs, various fees for a court appointed attorney, crime lab, and DNA collection, and fines, all of which totaled \$3850. CP 38. Edwards timely appeals. CP 43.

D. ARGUMENT

1. THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT DECLINED TO SUPPRESS EDWARDS'S STATEMENTS

When Edwards informed police that he had used methamphetamine and that the baggie pulled out of his pocket contained methamphetamine, the statements were drug induced and not a product of free intellect. Any questioning that produces a confession that is not the product of rational intellect and free will renders the confession inadmissible under the Fifth Amendment. Accordingly, this court must suppress Edwards's statements and reverse his conviction.

- a. The totality of circumstances surrounding Edwards's arrest indicate that he could not have knowingly, voluntarily, or intelligently waived his constitutional rights

After advising an arrestee of his or her rights under Miranda, "a confession is voluntary, and therefore admissible, if . . . the defendant . . . knowingly, voluntarily[,] and intelligently waives those rights. To be voluntary for due process purposes, the voluntariness of a confession is determined from a totality of the circumstances under which it was made." State v. Aten, 130 Wn.2d 640, 663-64, 927 P.2d 210 (1996). It is the "heavy burden" of the State "to demonstrate that the defendant knowingly and intelligently waived his [or her] privilege against self-incrimination and his

[or her] right to retained or appointed counsel.” Miranda, 384 U.S. at 475; see also State v. Reuben, 62 Wn. App. 620, 625, 814 P.2d 1177 (1991).

When a trial court determines that a confession is voluntary, this court may uphold that determination only “if there is substantial evidence in the record from which the trial court could have found the confession was voluntary by a preponderance of the evidence.” Aten, 130 Wn.2d at 664. “Substantial evidence is ‘evidence sufficient to persuade a fair-minded, rational person of the truth of the finding.’” State v. Levy, 156 Wn.2d 709, 733, 132 P.3d 1076 (2006) (quoting State v. Mendez, 137 Wn.2d 208, 214, 970 P.2d 722 (1999)).

Although intoxication alone does not render a statement involuntary, it is a factor in deciding whether a defendant understood his or her rights and made a conscious and rational decision to waive them. Aten, 130 Wn.2d at 664; Reuben, 62 Wn. App. at 625; State v. Gardner, 28 Wn. App. 721, 723, 626 P.2d 56 (1981). Whether a defendant’s statements made in a state of intoxication are admissible “necessarily depend[s] upon the unique facts of the case.” State v. Gregory, 79 Wn.2d 637, 642, 488 P.2d 757 (1971), overruled in part on other grounds by State v. Rogers, 83 Wn.2d 553, 556, 520 P.2d 159 (1974).

In ruling that Edwards knowingly, voluntarily, and intelligently waived his Miranda rights, the trial court found “there [was] no indication,

no evidence whatsoever that Mr. Edwards was not sufficiently coherent to understand” and concluded that the possibility of his being “affected by some substance” did not prevent Edwards from waiving his rights. 1RP 48. Substantial evidence does not support the trial court’s ruling and in fact points in the opposite direction.

First, Officer Mike Catrain of the Ferndale Police Department testified that officers were called to the scene to respond to an assault in progress where the male involved “was acting very irrational[ly].” 1RP 13. Officer Catrain recounted that Edwards “had some strange actions inside the store and [the strange actions] continued out in the parking lot area of the business.” 1RP 13. When Officer Catrain arrived and asked Edwards “what had happened, what was going on with him,” Edwards stated “that he had used meth earlier that morning.” That Edwards was described by witnesses to be acting irrationally and that Edwards readily admitted using a controlled substance to a police officer undermines any conclusion that Edwards had the requisite faculties to waive his Miranda rights.

Second, Officer Catrain stated that Edwards appeared “in an altered state. He didn’t seem focused and that’s why there was concern that is there an issue here.” 1RP 17. Officer Catrain also indicated that Edwards was rocking back and forth and had other fidgety body movements. 1RP 17. Describing Edwards’s speech, Officer Catrain stated, “his speech wasn’t real

clear” and indicated that Edwards spoke at a low volume. 1RP 18-19. Officer Catrain also commented that he “was trying to make a determination as to whether it was drugs, a mental issue, medical issue, but . . . he wasn’t completely with it.” 1RP 20. Edwards’s affect at the scene of arrest suggests incapacitation to the point of being unable to understand and waive his constitutional rights. According to the State’s own witness, Edwards was in an altered state, did not seem “with it,” was unable to speak clearly and audibly, and exhibited repetitive and involuntary physical movements. Edwards was in no state to rationally and freely relinquish important constitutional protections.

Third, although Officer Jason Torgeson testified that Edwards cooperated and made eye contact when he waived his Miranda rights, 1RP 24, 28, this testimony was inconsistent with Officer Torgeson’s other observations. Officer Torgeson indicated that Edwards’s behavior was consistent with someone under the influence of narcotics. 1RP 33. Officer Torgeson also expressed his concern that the effects of the narcotics were increasing. 1RP 31-32. Officer Torgeson testified that “if we were having a conversation or talking with [Edwards], he would kind of gaze over and look to the other side, and I would have to redirect him and contact him and he would have to redirect.” 1RP 36-37. Officer Torgeson also acknowledged that Edwards was “in the distance and not really engaged.” 1RP 37. Thus,

Officer Torgeson's observations of Edwards were consistent with Officer Catrain's: Edwards behavior at the scene of arrest demonstrated that Edwards lacked the capacity to understand or waive his privilege against self-incrimination.

Fourth, Officer Torgeson admitted that Edwards would likely not have been fit to enter the county jail, stating, "There was a concern for me to keep him in the back seat of my patrol car and transport him to jail, knowing that Whatcom County Jail would require a fit for jail prior to being booked." 1RP 34. Edwards's perceived unfitness to enter the jail system undercuts any conclusion that Edwards was fit to waive his Miranda rights.

Finally, rather than taking Edwards to jail, officers requested an aid car to address their concerns over Edwards's physical and mental state. 1RP 37. Officer Torgeson followed the aid car to the hospital but released Edwards from custody given his need for a "lengthy stay" in the hospital.⁴ 1RP 37. That officers believed that Edwards's current state required the intervention of medical personnel and that responding medical personnel believed Edwards required hospitalization casts serious doubt on Edwards's ability to understand and waive his constitutional rights.

⁴ Edwards's testimony at trial was that he remained hospitalized until late the following morning. 1RP 139. He was not arrested until approximately two weeks after being released from police custody. 1RP 140.

The evidence adduced at the CrR 3.5 hearing overwhelmingly showed Edwards incapable of making a knowing, voluntary, and intelligent waiver. The trial court should have suppressed his incriminating statements.

- b. The erroneous admission of Edwards's statements was not harmless error and requires reversal of Edwards's conviction

The trial court's error in admitting evidence in violation of Miranda requires reversal unless it was harmless beyond a reasonable doubt. Reuben, 62 Wn. App. at 626-27. A constitutional error is harmless under the "overwhelming untainted evidence" test "if the untainted evidence is so overwhelming that it necessarily leads to a finding of guilt." State v. Guloy, 104 Wn.2d 412, 426, 705 P.2d 1182 (1985). The error here was not harmless under this standard.

Aside from Edwards's statements, the only other evidence of possession of methamphetamine was the admission of the controlled substance itself. 1RP 128 (admitting baggie of methamphetamine into evidence). At trial, Edwards did not dispute that meth was found in his pant pocket; rather, Edwards testified that he was wearing a pair of pants that his girlfriend had recently given him. 1RP 134-35. Thus, Edwards attempted to convince the jury that his possession was unwitting. See 1RP 115 (defense counsel proposing unwitting possession instruction). The trial court

instructed the jury on unwitting possession. CP 26. Edwards also testified that he had never seen methamphetamine in person. 1RP 158-59.

The trial court's admission of Edwards's custodial statements that Edwards had used and identified methamphetamine for arresting officers essentially rendered unavailable the unwitting possession defense. The statements were the only evidence that contradicted Edwards's testimony that he was unaware he had meth on his person. Therefore, the erroneous admission of Edwards's incriminating statements cannot be deemed harmless beyond a reasonable doubt. This court should reverse his conviction.

2. THE TRIAL COURT ERRED BY FAILING TO ENTER WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW PER CrR 3.5

The trial court held a CrR 3.5 hearing to determine whether Edwards's statements were the product of police coercion. However, the court failed to enter written findings of fact or conclusions of law as required by CrR 3.5(c). Even if this court concludes that Edwards's custodial statements were admissible, this court must nonetheless remand this matter for the entry of written findings of fact and conclusions of law, as the law requires.

CrR 3.5(c) provides, "Duty of Court to Make a Record. After the hearing, the court shall set forth in writing: (1) the undisputed facts; (2) the

disputed facts; (3) conclusions as to the disputed facts; and (4) conclusion as to whether the statement is admissible and the reasons therefor.” This rule plainly requires written findings of fact and conclusions of law. The trial court provided an oral ruling that Edwards’s statement to arresting officers was admissible, but no written findings or conclusions were ever entered. The trial court’s failure to enter written findings and conclusions violated the clear requirements of CrR 3.5(c).

“It must be remembered that a trial judge’s oral decision is no more than a verbal expression of his [or her] informal opinion at that time. It is necessarily subject to further study and consideration, and may be altered, modified, or completely abandoned.” Ferree v. Doric Co., 62 Wn.2d 561, 566-67, 383 P.2d 900 (1963). Moreover, an oral ruling “has no final or binding effect, unless *formally incorporated into* the findings, conclusions, and judgment.” Id. at 567 (emphasis added).

“When a case comes before this court without the required findings, there will be a strong presumption that dismissal is the appropriate remedy.” State v. Smith, 68 Wn. App. 201, 211, 842 P.2d 494 (1992).⁵ This is so because the court rules promulgated by our supreme court “provide[] the

⁵ Although Smith involved the suppression of evidence under CrR 3.6, the Smith court “agree[d] that the State’s obligation is similar under both CrR 3.5 and CrR 3.6 and that cases applying CrR 3.5 can furnish appropriate guidance.” Smith, 68 Wn. App. at 205. Thus, Smith’s mandate of written findings under CrR 3.6 should apply with equal force in the CrR 3.5 context.

basis for . . . needed consistency” and a “uniform approach.” State v. Head, 136 Wn.2d 619, 623, 964 P.2d 1187 (1998). Indeed, “[a]n appellate court should not have to comb an oral ruling to determine whether appropriate ‘findings’ have been made, nor should a defendant be forced to interpret an oral ruling in order to appeal his or her conviction.” Id. at 624. However, where a defendant cannot show actual prejudice from the absence of written findings and conclusions, the appropriate remedy is remand for entry of written findings of fact and conclusions of law. Id. at 624.

In this case, the trial court did not enter written findings or conclusions following the CrR 3.5 hearing and provided only an oral ruling. This court must therefore remand this matter to the trial court for entry of the findings and conclusions required by CrR 3.5(c).

E. CONCLUSION

The trial court erred when it admitted the statements Edwards made to police while under the influence. This error was not harmless. This court must reverse Edwards's conviction. Alternatively, this court must remand this matter to the trial court for the entry of written findings of fact and conclusions of law as CrR 3.5(c) requires.

DATED this 12th day of March, 2014.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC

A handwritten signature in black ink, appearing to read "K. March", written over a horizontal line.

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DIVISION ONE

STATE OF WASHINGTON)	
)	
Respondent,)	
)	
v.)	COA NO. 70965-8-1
)	
RAYMOND EDWARDS,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 12TH DAY OF MARCH 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY EMAIL AND/OR DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] WHATCOM COUNTY PROSECUTOR'S OFFICE
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SIGNED IN SEATTLE WASHINGTON, THIS 12TH DAY OF MARCH 2014.

X *Patrick Mayovsky*

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